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JAMES H. McKENNEY,
Clerk.

Supreme Court of the United States.

MARY M. ROGERS, Appellant,

vs.

HENRY H. PECK, Sheriff of Windsor County,

and

WILSON S. LOVELL, Superintendent of Vermont State Prison,
Appellees.

No. 368. October Term, 1905.

MOTION OF APPELLEES TO ADVANCE.

Supreme Court of the United States.

No. 368. October Term, 1905.

Mary M. Rogers, Appellant

vs.

Henry H. Peck, Sheriff of Windsor County,

and

Wilson S. Lovell, Superintendent of Vermont State Prison, Appellees.

ON APPEAL FROM DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF VERMONT.

Motion to Advance.

Henry H. Peck, sheriff of Windsor county, Vermont, and Wilson S. Lovell, superintendent of the Vermont state prison, Appellees in the above cause, move that this cause be advanced upon the docket of the court to be heard and argued at as early a date as can be fixed, convenient to the court.

Statement of the Case.

The appellant was indicted at the June, 1903, term of Bennington County Court, Vermont, for murder in the first degree, the specific charge being that she murdered her husband, Marcus M. Rogers, at Bennington, Vermont, on August 12, 1902, by administering chloroform to him. She was tried by jury upon said indictment, at the December, 1903, term of said Bennington County Court, and was found guilty of murder in the first degree, and thereupon was sentenced to suffer the punishment of death by hanging on the 3rd day of February, 1905, in accordance with the provisions of Vermont statutes, sections 4886 and 2010: the sentence further providing, as required by section 2007, Vermont statutes, that she be confined at hard labor in the state prison until three months before the time fixed for execution, and in solitary confinement in said prison from thence until the time of the execution; and she was committed to the state prison accordingly.

On February 1, 1905, the Governor of the State of Vermont reprieved the appellant until the 2d day of June, 1905, and on the 1st day of June, 1905, the Governor further reprieved her until the 23d day of June, 1905, and on the 22d day of June, 1905, the Governor further reprieved her until the 8th of December, 1905. On the 29th day of April, 1905, the appellant brought her petition to the Supreme Court of Vermont for a new trial on the ground of newly discovered evidence and alleged errors in her trial at county court. This petition was heard at the May, 1905, term of the Supreme Court of Vermont, and on May 30, 1905, judgment thereon was rendered by said court dismissing said petition.

On the 19th day of June, 1905, the appellant brought her petition to the Honorable District Court of the United States for the District of Vermont, for writ of Habeas Cor-

pus. The writ was issued by said court on the same day, and hearing thereupon had on June 21, 1905, and on June 22, 1905, the writ was dismissed and appellant remanded to her former custody, after which the last mentioned reprieve was granted; after the last reprieve an appeal to this court was allowed the appellant, to wit, on June 22, 1905.

The respondent, Peck, is the sheriff of the county of Windsor, upon whom devolves the duty, by the law of Vermont, of executing the sentence. The respondent, Lovell, is the superintendent of the Vermont state prison, and as such is the keeper of the appellant until she is taken by the sheriff for execution.

The principal allegations in the petition are that the reprieves granted by the Governor are illegal and that there is no warrant in law for restraining the appellant of her liberty under and by virtue of the reprieves, and that in so restraining her the appellees are depriving her of her life and liberty without due process of law and depriving her of the rights and protection guaranteed her by the Constitution of the United States:

Further, that when leave was granted, under section 1998 of Vermont statutes, to the appellant to file her petition to the Supreme Court of Vermont, for a new trial, the judges allowing the same made no order staying the execution of sentence until after the time fixed for hearing the petition, and that the Supreme Court of Vermont upon rendering judgment dismissing the petition for a new trial, did not appoint a time for executing the sentence, all of which, she alleges, is depriving her of life and liberty without due process of law, as contemplated by the Constitution of the United States:

Further, that at her trial at the Bennington County Court she was denied the right to cross examine a principal witness against her: Further that the Legislature of Vermont has provided no court of justice for trial of questions of law re-

moved from the county court in the county of Bennington; that the Supreme Court of Vermont sitting in general term is not such a court of justice for Bennington county and that the failure of the Legislature to provide a Supreme Court in Bennington county is depriving her of the privileges secured by the Constitution of the United States, and of her liberty and life without due process of law.

REASONS FOR THIS MOTION.

The appellees contend that no federal question is presented by the appellant in this case, and that due course of justice in the State of Vermont requires that it should be advanced and disposed of at the earliest reasonable time.

Further, that since under the revised statutes of the United States, section 766, any and every act under and by virtue of the laws and Constitution of the State of Vermont pending this appeal are null and void, the legality of any further reprieve by the Governor until this cause is disposed of is doubtful, and under section 2004 of the Vermont statutes no new sentence of death can be imposed to take effect until after the first day of January, 1907:

Therefore, if this cause is not heard and disposed of before December 8, 1905, there must result long delay in carrying out the penalty imposed by the law for the crime of which the appellant stands convicted.

CLARKE C. FITTS,
Attorney-General of Vermont,
For the Appellees.